

Office of the Attorney General  
State of North Dakota

Opinion No. 82-64

Date Issued: August 20, 1982  
Requested by: Dale Moug  
Director of Human Services

--QUESTION PRESENTED--

Whether a county social service board can charge a fee for the investigation and inspection required by Section 50-11.1-04 of the North Dakota Century Code, when the license applied for is not required by the applicant to conduct a family child care home as defined in Section 50-11.1-02(5), N.D.C.C.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a county social service board may not charge a fee for the investigation and inspection required by Section 50-11.1-04, N.D.C.C., absent any authority by the legislature to charge a fee.

--ANALYSIS--

An examination of the licensing statutes enacted by the legislature of the State of North Dakota reveals two distinct categories of licensing with regard to the charging of fees for that licensing procedure. Those two categories are:

1. Requiring the licensee to pay a fee as part of the licensing procedure and either establishing by statute the appropriate fee or granting the governing board of the licensing procedure the authority to establish the fee. Examples of this category can be found in Section 43-02.1-03, N.D.C.C., for accountants; Section 43-03-11, N.D.C.C., for architects; Section 23-09-17, N.D.C.C. for hotels, restaurants, and boarding houses; Section 23-10-05, N.D.C.C., for mobile home parks; and Section 43-17-22, N.D.C.C., for physicians.

2. Requiring a license, but the statute is silent as to the requirement of the payment of fees as a part of the licensing procedure. Examples of this category are found in Chapter 50-18, N.D.C.C., for Homes for the Aged and Infirm; Chapter 50-19, N.D.C.C., for Maternity Homes; Chapter 23-17.3, N.D.C.C., for Home/Health Agencies; Chapter 25-16, N.D.C.C., for Developmentally Disabled Facilities; and Chapter 25-15, N.D.C.C., for Sheltered Workshops.

The legislature, without an express statement of intent, has apparently established a policy of stating in the legislative enactment which licensing procedures require or permit the charging of a fee. The legislature has also determined that certain licensing procedures shall not include the charging of a fee, and has indicated these licensing procedures by omitting from the legislative enactment the setting of a specific fee or granting to the governing body the authority to set the fee for the licensing.

Chapter 50-11.1, N.D.C.C., is one of those categories of legislative enactments, wherein the legislature has not established a specific fee for the licensing procedure described in the chapter, nor has it granted unto the agency granting the license the authority to establish a licensing fee.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald  
Attorney General